

REMARKS

Claims 44-61 are pending. While the Office Action indicates claims 43-60 are pending, it is believed that this is incorrect. The application as originally filed contained claims 1-43. Claims 1-43 were canceled. Original claim 43 was a dependent claim. The first listed claim as now pending is a later added independent claim, which it is believed should be numbered claim 44.

Claims 44–61 Are Allowable Over the Cited References

The Office Action rejects claims 43-61 under 35 USC 103 over Huberman (US Pat. 6,292,830) in view of Taylor (US Pat. 6,292,830). This rejection is respectfully traversed.

The Office Action takes admits that Huberman does not disclose at least one of the plurality of atomic offers not included within the first-level offer, but takes official notice that this claimed feature is supposedly is old and well known in the auction art. This official notice is traversed and applicant request that the Examiner produce references showing this supposedly well know feature. The MPEP requires that when official notice is traversed, the Examiner provide documentary evidence if the rejection is to be maintained.

The Office Action further admits that Huberman does not disclose matching the counter offer to one of the plurality of hierarchal offers to create a zero sum offer, and closing the zero sum offer, but asserts these features are disclosed in Taylor, and it would have been obvious to combine these features of Taylor with Huberman. However, as explained below, Taylor does not remedy these deficiencies of Huberman.

Claim 44 is directed to a method for transacting multi-party electronic commerce over a network, and recites, in pertinent part, "creating a plurality of hierarchical offers based on the plurality of atomic offers, the plurality of hierarchical offers including at least one first-level offer including at least one of the plurality of atomic offers, and at least one second-level offer including the first-level offer and at least one of the plurality of atomic offers not included within the first-level offer," "matching the counter offer to one of the plurality of hierarchical offers to create a zero-sum offer," and "closing the zero-sum offer." Claims 50 and 56, directed to a computer-readable medium and a system, respectively, recite similar subject matter.

Huberman is directed to a system for auctioning document services over a network. Huberman discloses that a customer provides a description of a desired document service (e.g.,

printing, scanning, reproduction, etc.) to a broker, who then conducts a brokered auction among various participating suppliers. The winning supplier then provides the document service at the agreed-upon price. *See, e.g.,* Abstract; Cols. 3:40–60, Col. 4:45–67, Col. 10:6–22; FIGS. 3a, 3b, 4a and 4b.

Huberman discloses that a document service request may include various descriptive details, such as number of copies, size and paper quality, etc., but fails to teach or suggest that multiple document service requests, or “offers,” may be aggregated into a multi-level, hierarchical structure. Rather, Huberman teaches that a single document service request is generated by the customer and bid upon by various suppliers. *See, e.g.,* Col. 10:6–22. Consequently, Huberman fails to disclose “creating a plurality of hierarchical offers based on the plurality of atomic offers, the plurality of hierarchical offers including at least one first-level offer including at least one of the plurality of atomic offers, and at least one second-level offer including the first-level offer and at least one of the plurality of atomic offers not included within the first-level offer,” as recited by claims 44, 50 and 56. The Office Action’s reference to col. 7, lines 3-15 is not understood. This paragraph is a general discussion of processes that can be carried out in sequence or contemporaneously. The word “offer” is not even mentioned.

Huberman also fails to disclose that a supplier’s bid may be matched to one of the document service requests to create a zero-sum request, or “zero-sum offer.” Instead, Huberman teaches that participating suppliers bid upon a single document service request, and the lowest bidding supplier, also satisfying the reservation price (if specified), wins the auction. *See, e.g.,* Col. 11:25–50. Accordingly, Huberman fails to disclose “matching the counter offer to one of the plurality of hierarchical offers to create a zero-sum offer” and “closing the zero-sum offer,” as recited by claims 44, 50 and 56.

Furthermore, Taylor fails to provide the missing subject matter. The Office Action refers to col. 71, lines 25-31, col. 78, lines 26-35 and col. 102, lines 15-35 as supposedly showing matching the counter offer to one of the plurality of hierarchal offers and closing the zero sum offer. These portions of Taylor read as follows:

Some companies are learning how to transform a zero-sum game into an infinite game. In a zero sum game, there's a finite amount of resource and the game is to decide how it gets distributed. In an infinite game, the purpose of the game is to continue the game--to grow and expand the resource base and the distribution model. The best models to use when playing infinite games are living systems models. Col. 71, lines 25-31.

The system and process of the present invention are most productive when there are multiple levels of recursion and feedback occurring simultaneously. The use of an interactive process that includes multiple levels of recursion, feedback and self-adjustment yields a system and process that can be used to facilitate the interaction among agents such that synergistic results occur. In solving complex problems, for example, the system and process need not address the entire problem at once, but instead evolves toward a solution. In short, problems are dissolved, not solved. Col. 78, lines 26-35.

The transportation system offers similar advantages in connection with other modes of transportation. One can appreciate the lack of utilization of modes of transportation by considering the number of cars that are not in use at any one time. The same applies to trucks, boats and trains. A system that is aware of the location and desired destinations of all agents within the system, allows further optimization through multi-modal transportation. In particular, based on past experience, an agent is transported in the most efficient way possible using whatever particular modes of transportation will yield fastest transport. Again, the only systems necessary are the individual environment (agent module) or egg having the ability to know its location, its occupancy, the desired destination of its occupancy and the ability to report all of these to a central system. To make the central system a learning system, however, the system should have a predictive capability to predict the best routing of the agent as well as storage means for keeping track of predictive routing as well as actual results so that the system receives feedback and can then improve itself using principles of recursion and iteration. Col. 102, lines 15-35.

The word "offer" does not even appear in these portions, much less a disclosure of a counter offer, a hierarchal offer or closing a zero sum offer as required by the present claims. As such, even if the references are combined as suggested by the Office Action, the resulting combination would not produce the claimed invention.

Consequently, the Applicant submits that none of references cited by the Examiner teach or suggest the features recited by claims 44, 50 and 56, either singly or in combination.

Accordingly, claims 44, 50 and 56 are allowable over the cited references. Claims 45-49, depending from claim 44, claims 51-55, depending from claim 50 and claims 57-61, depending from claim 56, are also allowable, at least for the reasons discussed above. Consequently, the Applicant respectfully requests that the Examiner reconsider and withdraw the pending § 103 rejections and issue a notice to that effect.

CONCLUSION

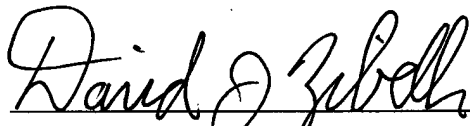
In view of the amendments and remarks submitted above, the Applicant respectfully submits that the present case is in condition for allowance. A notice to that effect would be greatly appreciated.

The Examiner is invited to contact the undersigned at (202) 220-4250 to discuss any matter concerning this application.

The Office is authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16, § 1.17, or § 1.136 to Deposit Account No. 11-0600.

Respectfully submitted,

KENYON & KENYON

A handwritten signature in cursive script, reading "David J. Zibelli". The signature is written in dark ink and is positioned above a horizontal line.

David J. Zibelli (Reg. No. 36,394)

August 24, 2005

1500 K Street, N.W.
Washington, D.C. 20005
(202) 220-4200 (phone)
(202) 220-4201 (fax)

DC:580764v1